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CLERK US DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

BY VMH DEPUTY

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF CALIFORNIA

'08 MJ 2622

UNITED STATES OF AMERICA

v.

ROBERT WALTER SARNIE

COMPLAINT FOR VIOLATION OF

TITLE 18 United States Code

Section 111 (a) (1)

BEFORE ______________________________ San Diego, California

NAME OF MAGISTRATE ADDRESS OF MAGISTRATE

THE UNDERSIGNED COMPLAINANT BEING DULY SWORN STATES:

That on or about August 24, 2008, at San Diego, California, within the Southern District of California:

ROBERT WALTER SARNIE

did forcibly assault, resist, oppose, impede or interfere with a person named in Title 18, United States Code, Section 1114, to wit, U.S. Border Patrol Agent ROBERT TONG, while TONG was engaged in the performance of his official duties; in violation of Title 18, United States Code, Section 111(a)(1), a felony.

And the complainant states that this complaint is based on the attached affidavit which is incorporated herein by reference.

David Eaton, FBI

David J. Eaton
Special Agent FBI

Sworn to before me, and subscribed in my presence on this 25th day of August, 2008, at 4:02 ~~a.m.~~/p.m.

United States Magistrate Judge

DOA 8/24/08 VMH

DEC

A F F I D A V I T

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I, David J.Eaton, being duly sworn, depose and say:

1. I am a Special Agent of the Federal Bureau of Investigation (FBI) assigned to the San Diego Field Division. I have been so employed since June, 1988. My primary assignment is the investigation of violent federal crimes to include Assault on Federal Officers, Bank Robberies and other matters. The information contained in this affidavit is based upon my personal knowledge and on the information I have learned from reviewing official reports and speaking with other local and federal law enforcement officers.

2. On Sunday, August 24, 2008, the affiant responded to the U.S. Border Patrol (USBP) Station at Imperial Beach, California, to investigate the report of an assault on a USBP Agent which had occurred earlier that same day.

3. The affiant interviewed Border Patrol Agent (BPA) ROBERT TONG who advised as follows: On Sunday, August 24, 2008, BPA TONG and his partner, BPA SERGIO ZAPATAROLDAN, were patrolling the area of Seacoast Drive in Imperial Beach, California. BPAs TONG and ZAPATAROLDAN were both dressed in their USBP uniforms which included markings identifying them as federal law enforcement officers. At approximately 3:00

a.m., BPA TONG and his partner parked their USBP vehicle and proceeded to patrol on foot in the area near the south end of Seacoast Drive. BPA TONG noted that the area in which they were patrolling was an area in which USBP Agents frequently encounter individuals attempting to enter the United States illegally. BPA TONG and his partner encountered a group of teenagers on the beach. After directing the group to leave the area for their own safety, BPA TONG and his partner encountered an individual, later identified as ROBERT WALTER SARNIE, who was walking with a female companion. BPA TONG and his partner approached SARNIE and his female companion and identified themselves as USBP Agents. SARNIE was immediately combative and said, "Fuck you." When BPA TONG asked SARNIE if he had any identification, SARNIE said "Fuck you. I'm a U.S. citizen. I live here." SARNIE pointed to a residential condominium several yards away. BPA TONG asked the female companion if she had any identification. The female companion advised that they had been walking on the beach and that she did not have her identification with her. SARNIE continued to be verbally combative with the Agents. At that point, BPA TONG and his partner asked the female companion to escort SARNIE back to their residence. SARNIE continued to curse at the Agents as he walked away. BPA TONG watched as SARNIE and the female companion entered the condominium which SARNIE had previously identified as his residence. BPA TONG and his partner then continued with their patrolling activities. Several minutes later, BPA TONG observed SARNIE exit his residence, tucking an unknown object into what appeared to be his right rear pocket. BPA TONG notified his partner that SARNIE was walking back toward them. BPA TONG and his partner moved into the shadows of the rocks which form a seawall along the beach. They did so in an effort to avoid another verbal confrontation with SARNIE. SARNIE walked over to the area where BPA TONG and his partner were standing and he confronted them. SARNIE was initially very polite and he told the Agents that he understood they were simply doing their job. SARNIE then became combative and said words to the effect of, "You have to use your fucking minds. You're a bunch of idiots." BPA TONG told SARNIE that he needed to calm down. SARNIE responded, "Oh really." SARNIE then stepped back with one foot and assumed what BPA TONG perceived to be a combat stance. SARNIE removed an object from his right pocket or waistband and raised it in a threatening manner. (This item was later identified as a wooden hammer/mallet approximately 12 inches in length with a barrel-shaped head that is flat on both ends.) BPA TONG was standing approximately one to two feet from SARNIE and he believed that SARNIE was about to hit him in the head with the unknown weapon. BPA TONG yelled, "Weapon!" in an effort to notify his partner of what he had just observed. At that point, BPA TONG's partner grabbed SARNIE from behind in a "bear hug" in an effort to control his arms. BPA TONG and his partner wrestled SARNIE to the ground and gave him commands to comply and place his arms behind his back. SARNIE refused to comply with the Agents' commands and he began reaching for his waistband with one of his hands. At that point, BPA TONG believed SARNIE was reaching for another weapon. BPA TONG's partner struck SARNIE several times in the shoulder area with his fist in an effort to get SARNIE's left arm behind his back. SARNIE continued to curse at the Agents and he refused to comply with their commands. BPA TONG and his partner were finally able to forcibly handcuff SARNIE. BPA TONG estimated that the struggle with SARNIE lasted approximately 30 to 40 seconds, but in his mind it "seemed like forever." BPA TONG and his partner moved SARNIE from the area of the scuffle and placed him on a bench located at the south end of Seacoast Drive. BPA TONG immediately notified his supervisor of the incident. While they were waiting for other USBP Agents to arrive, SARNIE stated something to the effect of, "If you didn't have a gun and badge ..." BPA TONG stated, "What do you mean?" SARNIE replied, "It would be a different story." BPA TONG perceived SARNIE's statements to be a verbal threat. SARNIE then told BPA TONG that he was simply out walking his dog and that the Agents had caused his dog to run away in their efforts to apprehend SARNIE. BPA TONG noted that he never saw SARNIE walking a dog during either of the two confrontations with SARNIE that night. BPA TONG noted that SARNIE signed a form refusing medical treatment offered by a USBP Emergency Medical Technician who had responded to their location. BPA TONG recovered the wooden mallet which SARNIE had used to threaten him. That item has been preserved as evidence.

4. The affiant interviewed BPA SERGIO ZAPATAROLDAN who was working with BPA ROBERT TONG during the early morning hours of Sunday, August 24, 2008. BPA ZAPATAROLDAN provided a statement which was consistent in all material details with the statement provided by BPA TONG as described above.

5. The affiant interviewed ROBERT WALTER SARNIE who was in custody at the Imperial Beach USBP Station. SARNIE advised that he had consumed approximately a half a bottle of wine at dinner the previous evening, and that he did not consider himself to be intoxicated at the time of the interview. SARNIE was advised of his Constitutional Miranda rights. SARNIE stated that he understood his rights, and that he was willing to answer questions at that time. SARNIE then advised as follows: On Sunday, August 24, 2008, at some time between midnight and 1:00 a.m., SARNIE was walking his dog on the beach near his residence located at 1680 Seacoast Drive, Unit D, Imperial Beach, California. SARNIE was accompanied by an individual who he described as his "old lady". SARNIE identified that individual as FRANCES BERG. SARNIE explained that he and BERG were not technically married, but that she lived with him and he considered her to be his common-law wife. As SARNIE and BERG were approaching their residence, they were confronted by two individuals who SARNIE recognized as U.S. Border Patrol Agents based on their uniforms. The USBP Agents questioned SARNIE about his citizenship and asked if he had any identification. SARNIE pointed to his condominium and told the USBP Agents that he lived right there and that he was a U.S. citizen. SARNIE

described the Agents as being belligerent and having what he described as a "crappy attitude." At one point, SARNIE asked the Agents, "Is this my Government talking to me or are you just being an ass?" According to SARNIE, the USBP Agents threatened to beat him up and throw him in jail. SARNIE and BERG then walked the short distance to their condominium. When SARNIE got back to his residence, he realized that his other dog needed to go for a walk. Within several minutes of arriving at the condominium, SARNIE left the condominium with his other dog while BERG remained at the residence. SARNIE advised that he usually carries a hammer with him for personal protection when he walks his dog on the beach. SARNIE described the item as a plastic hammer with a wooden handle, approximately 12 inches in length. SARNIE was carrying that hammer when he exited his residence with his dog. SARNIE advised that he was carrying the hammer out in the open, and that he made no effort to conceal the item. As SARNIE walked with his dog along the rocks near the sand, he encountered the two USBP Agents who had just made contact with him approximately five or six minutes earlier. One of the Agents apparently saw the hammer SARNIE was carrying and yelled "Weapon, weapon!" The USBP Agents then tackled SARNIE to the ground where they punched, kicked and stomped him for what seemed like several minutes. The USBP Agents then handcuffed SARNIE and dragged him down the rocks to a bench located at the end of Seacoast Drive. SARNIE advised that his dog ran away during the altercation. SARNIE claimed that he did not use the hammer in a threatening manner, and that he did not verbally or physically provoke the confrontation with the USBP Agents. SARNIE claimed that he was not offered medical attention after being placed into handcuffs at the scene of his arrest. SARNIE is described as follows:

Name:	ROBERT WALTER SARNIE
Race:	White
Sex:	Male
Date of Birth:	February 9, 1968
Social Security #:	XXX-XX-3044
Residence:	1680 Seacoast Drive, Unit D Imperial Beach, California

6. The affiant interviewed the female occupant at 1680 Seacoast Drive, Unit D, Imperial Beach, California. That witness advised as follows: The witness currently resides in the Phoenix, Arizona, area. The witness is currently renting the condominium located at 1680 Seacoast Drive, Unit D, for the weekend with her father and brother. The witness and her family checked into the condominium on Wednesday, August 20, 2008. The witness first met ROBERT SARNIE on that date. The witness intends to return to Arizona on Monday, August 25, 2008. The witness knows SARNIE only as the owner of that condominium, but she admitted that she and SARNIE have become friendly during the past several days. On the evening of Saturday, August 23, 2008, the witness and SARNIE went out for dinner. Between the two of them, they consumed a bottle of wine. After dinner, the witness and SARNIE went for a walk along the beach south of SARNIE's condominium. The witness knows SARNIE to own only

one dog, and she noted that SARNIE's dog was not with them when they went on their walk along the beach. On August 24, 2008, at approximately 3:00 a.m., the witness and SARNIE were walking on the beach back to SARNIE's condominium when they were contacted by two uniformed U.S. Border Patrol Agents. The Agents asked the witness and SARNIE for their identification. SARNIE pointed at his nearby condominium and told the Agents that he lived right there. The witness described the USBP Agents as being somewhat rude, but still professional in their demeanor. No profanities were exchanged and the contact with the USBP Agents was very brief. When the witness and SARNIE walked away from the Agents, it was her belief that everything was fine. When the witness and SARNIE arrived at the condominium, SARNIE realized that his dog had gotten out and could not be found. SARNIE was very upset by this fact. SARNIE left the condominium several minutes later to go look for his dog. The witness advised that she did not see SARNIE bring any item for personal protection with him when they went for their earlier walk on the beach. The witness noted that SARNIE frequently told her how safe it was to walk the beach in that area. The witness has had no contact with SARNIE since he left the condominium to look for his dog. It should be noted that the female companion witness is not SARNIE's common-law wife, FRANCES BERG, as SARNIE had claimed during his interview.

7. Based on the statements of the above witnesses, and on my experience in investigating Assault on Federal

Officer matters, I believe there is probable cause to charge ROBERT WALTER SARNIE with violation of one count of Title 18, United States Code, Section 111 (a) (1).

David J. Eaton, FBI
David J. Eaton
Special Agent, FBI

Sworn to before me and subscribed in my presence this 25th day of August, 2008, at 4:02 ~~a.m.~~/p.m.

W McCurine Jr.
The Honorable William McCurine, Jr.
United States Magistrate Judge